SUPREME COURT, U.S.
Office - Supreme Court, U.S.
FILED
JUL 17 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 102[illegible]137

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-AFL-CIO),
and
BENTON HARBOR MALLEABLE LOCAL No. 880 of International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-AFL-CIO),
Petitioners,
v.
BENTON HARBOR MALLEABLE INDUSTRIES,
Respondent

REPLY MEMORANDUM OF PETITIONER

HAROLD A. CRANEFIELD,
KURT L. HANSLOWE,
REDMOND H ROCHE, JR.,
Attorneys for Petitioners,
8000 East Jefferson Avenue,
Detroit 14, Michigan.

SUBJECT INDEX

	Page
Opinion Below	1
Reply Memorandum of Petitioner	2-5

INDEX TO AUTHORITIES CITED

Columbia Law Review, Stare Decisis, Vol. 49, pp. 735, 752 (1949)	4
Federal Employers Liability Act, 35 Stat. 65, as amended; 36 Stat. 291 and 53 Stat. 1404, 45 U. S. C. 51-60	3
Signal-Stat Corporation v. United Electrical Workers, 235 F. 2d 298 (C. A. 2, 1956)	2, 3, 4
Textile Workers Union of America v. Lincoln Mills of Alabama, 77 Sup. Ct. 912	3, 4
United States Arbitration Act, 61 Stat. 669, 9 U. S. C., Sec. 1	4
Wilkerson v. McCarthy, 336 U. S. 53 (1949)	3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 1028

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-AFL-CIO),

and

BENTON HARBOR MALLEABLE LOCAL No. 880 of International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-AFL-CIO),

Petitioners,

v.

BENTON HARBOR MALLEABLE INDUSTRIES,

Respondent

REPLY MEMORANDUM OF PETITIONER

OPINION BELOW

Since the petition for certiorari was filed, the opinion below has been reported at 242 F. 2d 536.

REPLY MEMORANDUM OF PETITIONER

Respondent appears to confine its serious opposition to the petition to its contention that the decision below basically rests on its facts and is distinguishable from all other decisions in which a stay pending arbitration is sought, including *Signal-Stat Corporation v. United Electrical Workers*, 235 F. 2d 298 (C. A. 2, 1956); cert. denied June 10, 1957, 25 LW 3366, Docket #520, October 1956 Term, petition for rehearing pending. In support of this position, respondent attempts to set up a straw man in its out-of-context quote from the petition appearing in respondent's Brief in Opposition, at page 4, which respondent then proceeds to demolish with a quotation from the opinion below. Of course, petitioner does not, and could not, contend that the decision below would result in the denial of a stay under any and all circumstances. Obviously, if the contract specifically provided for arbitration of a breach of the no-strike clause, application of the decision below would have resulted in the Court granting the stay.

Respondent's entire discussion is peripheral. As we have stated on page 9 of our petition, we are not concerned with the propriety of a stay under any and all circumstances, and, indeed, no such universally applicable rule could conceivably be formulated in view of the diversity of language in various contracts. We do, however, contend that in the numerous contracts which contain general arbitration provisions providing for arbitration of differences as to the meaning and application of the agreement, the Courts of Appeal are in basic conflict in that the Sixth Circuit below held, on the basis of a generally restrictive approach, that a contract containing such general language did not provide the basis for a stay pending arbitration of

a suit alleging breach of the no-strike clause, while the Second Circuit, in *Signal-Stat Corporation v. United Electrical Workers, supra*, held that a contract containing such general language did provide the basis for such a stay. Respondent's strained attempt to reconcile the decision below with that in *Signal-Stat* does not, and could not, obscure this basic area of conflict.

In *Textile Workers Union of America v. Lincoln Mills of Alabama*, 77 Sup. Ct. 912, and related cases, this Court very recently stressed the importance of arbitration in collective bargaining contracts, and clarified one area of application of abritration to these agreements. These decisions did not, however, clarify the second basic area of confusion and conflict which exists with regard to these arbitration provisions; i.e., whether they will be restrictively or liberally interpreted and applied. The fact that review of this case would require the court to consider certain terms and provisions of a particular contract is irrelevant to the considerations normally governing issuance or denial of a petition for certiorari. In fact, the approach of the various federal courts to general arbitration provisions in collective bargaining contracts cannot be made to conform in any other way. In *Wilkerson v. McCarthy*, 336 U. S. 53 (1949), Mr. Justice Douglas' concurring opinion emphasizes the necessity in some cases of reconciling differing basic approaches of courts leading inevitably to inconsistent results through granting certiorari in certain selected cases which highlight the difference in basic approaches. The appendix to this concurring opinion lists the numerous cases in which the Court granted certiorari in order to finally construct a definitive basic approach which lower courts should follow in application of the Federal Employers Liability Act, 35 Stat. 65, as amended; 36 Stat. 291 and 53 Stat. 1404, 45 U. S. C. 51-60. No such extensive exercise of this Court's certiorari powers would

be necessary in order to definitively clarify the broad approach to interpretation and application of arbitration clauses which this Court, in *Textile Workers Union v. Lincoln Mills of Alabama*, *supra*, has so recently indicated it favors. Granting of the petition sought herein, possibly in conjunction with granting of the petition for rehearing currently pending in *Signal-Stat v. United Electrical Workers*, *supra*, would unquestionably provide the clarification so necessary to lower courts and the bar to prevent a continuation of the conflicting and inconsistent results in the various circuits arising out of motions for stays pending arbtiration under substantially identical contract containing general arbitration provisions. As Mr. Justice Douglas has stated in *Stare Decisis*, *49 Columbia Law Review*, 735, 752 (1949), exercise of this Court's discretionary power to grant writs of certiorari in cases superficially appearing to rest on specific fact situations is necessary, from time to time, to correct "an indifferent or unfriendly attitude [which has] permeated [lower courts] with a philosophy hostile to that reflected in the legislation", in this case the United States Arbitration Act, 61 Stat. 669, 9 U. S. C. Section 1, *et seq.*

In addition, while petitioner feels that the Court below was correct in that phase of the decision which held that the United States Arbitration Act applied to collective bargaining contract, there can be little question that an additional element of confusion was injected into those suits in which stays pending arbitration are sought by this Court's avoidance of that question in *Textile Workers Union v. Lincoln Mills of Alabama*, *supra*, and related cases, and that portion of Mr. Justice Frankfurter's dissenting opinion in those cases in which he concludes that the majority implicitly rejects application of the Arbitration Act to collective bargaining agreements, 77 Sup. Ct. 923, 926.

Petitioner therefore respectfully requests this Court to grant certiorari in this case in order that the bench and the bar might be provided authoritative guidance as to the proper application of general provisions of arbitration clauses in collective bargaining contracts, particularly as they are raised by motions of defendants to stay proceedings pending arbitration in numerous and important cases.

Respectfully submitted,

HAROLD A. CRANEFIELD,
KURT L. HANSLOWE,
REDMOND H. ROCHE, JR.,
Attorneys for Petitioners,
8000 E. Jefferson,
Detroit 14, Michigan.

Date: July 10, 1947.